

STRAITS SETTLEMENTS LAW REPORTS.

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[APPELLATE JURISDICTION]

HUGGARD, C.J. & MILLS, J.

December 9, 1933.

BIKARMA SINGH v. SHIVABALAK SHAH.

[SINGAPORE DISTRICT COURT IN FORMA
PAUPERIS APPEAL No. 11 of 1933]

*Jurisdiction of Assistant District Judge—
Ordinance No. 101 (Courts), Sections 13(1) and
38(1)—Civil Procedure Code, Section 62(1).*

The "amount in dispute" in Section 13(1) and Section 38(1) of Ordinance No. 101 (Courts) does not mean the aggregate amounts of the claim and counterclaim. Accordingly the Assistant District Judge has jurisdiction to try a case in which the Plaintiff claimed \$90 and the Defendant counterclaimed for \$41.59 and no appeal lies from his decision. His decision may, however, be reviewed.

Appeal from the decision of the District Judge that he had no jurisdiction to re-try the case as it was *res judicata*, having already been decided, with jurisdiction, by the Assistant District Judge. The facts appear from the judgment of Huggard, C.J.

N. A. Mallal for the Appellant.

S. Mitter for the Respondent.

HUGGARD, C. J.—In this action before the Assistant District Judge the Plaintiff claimed \$90/- for wages and the Defendant counterclaimed for \$41.59. The Plaintiff's claim was dismissed and Judgment was entered for the Defendant on the counterclaim.

The Plaintiff then applied to the Supreme Court under section 13(1) of Ordinance No. 101 (Courts) for revision of the decision and the matter came before the late Chief Justice, Sir William Murison, who held that the "amount in dispute in the action" was the amount of the claim plus the amount of the counterclaim, and as that aggregate amount exceeded \$100/- the matter was one for appeal and not for revision. He also held that, for the same reason, the Assistant District Judge had no jurisdiction to try the case.

In my opinion this decision was not correct. It may, I think, be safely assumed that the attention of the learned Judge was not drawn to section 62(1) of the Civil Procedure Code, from which section it is quite clear, in my opinion, that this matter was in fact within the jurisdiction of the Assistant District Judge and was therefore a matter for revision and not for appeal.

Having, however, dismissed the application for revision, Sir William Murison went on to order a retrial of the case before the District Judge. Accordingly the case came before the District Judge and he held that, notwithstanding the order made by Sir William Murison, the matter was *res judicata* and that he could not retry it.

From that decision the Plaintiff has now appealed to this Court.

I have already indicated that, in view of the provisions of section 62(1) of the Civil Procedure Code, the "amount in dispute" in this action does not exceed \$100 - and therefore, by reason of section 13(1) of Ordinance No. 101 (Courts) there is no right of appeal. This appeal must therefore be dismissed as we have no jurisdiction to deal with the matter by way of appeal.

In all the circumstances, however, we consider that the case is one in which Supreme Court should exercise its powers under section 13(1) of Ordinance No. 101 (Courts) and call for proceedings for the purpose of reviewing the original decision of the Assistant District Judge. It is true that the matter has already come before Sir William Murison for review under that section, but from what has been stated above it is clear that he did not go into the merits of the matter. It appears to me to be proper, therefore, that this course should now be adopted.

In these circumstances this appeal will be dismissed but the proceedings before the Assistant District Judge will be called for and the matter will in due course be put down for consideration before a single Judge.

MILLS, J. concurred.

Judgment accordingly.

Solicitors for the Appellant—*Mallal and Namazie.*

Solicitors for the Respondent—*Pillai & Co.*

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

December 2, 1933.

E. MOHAMEDI v. H. MULCHAND & ANOR.

[SINGAPORE CIVIL SUIT No. 731 of 1933]

*Practice—Distress—Civil Procedure Code
S. 738, 739.*

The moveable property of the defendant was secured and taken into custody by the Sheriff in pursuance of an order of Court made under Section 689 of the Civil Procedure Code. Subsequently on the 18th September